"places of public resort". However, when we come to regulation 11 we note that a licence is required for "any such place of public resort". It appears to me that grammatically "any such place of public resort" can only refer to the particular places of public resort which are mentioned in regulation 10 as being included in the definition and therefore the "certain places of public resort" which are regulated are those "where any entertainment or amusement is carried on and to which the public or any class thereof may have access on payment of an admission fee or where the public are invited to take part in such entertainment or amusement on payment of a fee". It appears to me therefore that these regulations only apply to places of public resort to which access is had or participation in the entertainment thereat is permitted on payment of a fee.

It has been argued that there is nothing in this case to indicate that a fee will be charged for admission to or participation in any entertainment to be carried on at the proposed inn. The general application has been for approval of "nocturnal entertainment" on the premises (See Exhibit D. 7 folios 1 and 4). From the original application it is not clear whether or not a fee will be charged. It is perfectly clear however that if a fee is charged for admission to "nocturnal entertainment" on the premises then a licence will be necessary, even though there may be no fee provided for the licence. Since it is perfectly clear that if a fee is charged a commercial enterprise will be carried on upon these premises and it will be contrary to the Town Planning provisions of the Town Boards Enactment it necessarily follows that the Town Council should not consider licensing or exempting these premises from any licence under Part VIII of the Bye-Laws. I therefore consider that the application should be granted.

I am not saying whether or not a first class hotel open generally to the public at which dancing takes place is to be licensed under any other provision of law. I am here concerned only with regulations under Part VIII of the Bye-Laws under the Town Boards Enactment and not with the provisions of any other written law. I hold that if an admission fee is to be charged to the entertainment the place is such a place of public resort as is subject to regulation under Part VIII. If no fee is to be charged it is not such a place and no licence under regulation 10 is necessary. In that case, the owner will not be adversely affected by an order of prohibition as prayed. I am not saying that the carrying on of a first class hotel with dancing will be lawful if no admission fee is charged. All I say is it will not be caught by Part VIII of the Bye-Laws under the Town Boards Enactment, which is all I am concerned with today. What is "an admission fee" or "payment of a fee" will depend, of course, on the facts of each particular case.

Order as prayed.

I will now hear any argument as to costs.

Application granted.

Solicitors: *N. Sharma; Gibb & Co.; Braddell & Ramani.*

PUBLIC PROSECUTOR v. FATIMAH

[A. Cr. J. (Hepworth J.) January 14, 1960]

[Kota Bharu — Criminal Appeal No. 42 of 1959]

Customs Ordinance, 1952, ss.115 and 131(2) — Knowingly being in possession of uncustomed goods — Burden of proof on accused — Rebuttal of presumption of knowledge.

The respondent was stopped by a Customs Officer when walking past the Customs Shed at Rantau Panjang Railway Station, Kelantan. She was asked if she had anything to declare and replied that she had only some old clothings. After searching the bags she was carrying the Customs Officer found apart from old clothings a number of dutiable articles. The respondent did not give a reasonable explanation of the presence of these articles or produce any receipts. She was accordingly charged with knowingly being in possession of uncustomed goods contrary to section 131(1)(d) of the Customs Ordinance, 1952. At the conclusion of the prosecution case the respondent was acquitted and discharged without being called for her defence. The Public Prosecutor appealed.

Held: what the prosecution had to prove was simply that the respondent was in possession of dutiable goods at the time and place alleged in the charge. The effect of section 115 of the Ordinance is that if a customs officer finds a person in possession of dutiable goods anywhere in the Federation he can take him to court and make him prove that the duty has been paid, or make him rebut the presumption of knowledge which is created by section 131(2). In the latter case the person charged must prove to the satisfaction of the Court that he does not know that the duty has not been paid. Appeal allowed.

Cases referred to:—

(1) *Public Prosecutor* v. *Tay Yew Lia* [1957] M.L.J. 17.

(2) *Yap Yoon Lin* v. *R.* [1954] M.L.J. 59.

MAGISTRATE'S CRIMINAL APPEAL.

Syed Hamzah (Deputy Public Prosecutor) for the appellant.

Wan Mustapha bin Haji Ali for the respondent.

Hepworth J.: In this case the respondent was charged with knowingly being in possession of uncustomed goods contrary to section 131(1)(d) of the Customs Ordinance 1952. At the conclusion of the prosecution case the respondent was acquitted and discharged without being called upon for her defence. From this decision the Public Prosecutor appealed.

The brief facts of the case were that the respondent was stopped by a Customs Officer when walking past the Customs Shed at Rantau

Panjang Railway Station, Kelantan, and when asked if she had anything to declare replied that she had only some old clothings. On examination of the two bags which she was carrying a number of articles were found other than old clothings. Evidence was led that these articles were dutiable goods. The respondent did not give an explanation with regard to these articles which the Customs Officer considered reasonable nor did she produce any receipts. The respondent was accordingly charged as stated above, and to this charge she claimed trial.

What the prosecution had to prove in this case was simply that the respondent was in possession of dutiable goods at the time and place alleged in the charge. That is all they had to prove. The respondent was alleged to have said she had nothing to declare and was found to be carrying a number of articles and to be wearing, amongst other things, two new sarongs. The Customs Officers were not satisfied with her explanation as to these goods and she produced no receipts in respect of them. One can assume in the absence of evidence to the contrary that Customs Officers do not act capriciously when considering the facts of such a case and whether a charge should be brought. In the case of *Public Prosecutor* v. *Tay Yew Lia*[1], Good J. put it this way:

> "The effect of section 115 of the Customs Ordinance, 1952, is that if a Customs Officer finds a person in possession of dutiable goods anywhere in the Federation he can take him to Court and make him prove that the duty has been paid, or make him rebut the presumption of knowledge which is created by section 131(2)."

No presumption arises under section 115 of the Ordinance. When a person is charged and claims trial a dispute arises. Once a dispute has arisen section 115 says the burden of proof is on the defendant. The defendant may discharge this onus by producing a receipt for the duty or he may know that the duty has been paid and, although unable to produce the receipt, may be able to prove it (see the example of the bottle of whisky in para. 4 of the judgment of Good J. in *Public Prosecutor* v. *Tay Yew Lia, supra*).

If he can do neither of these things he must rebut the presumption of knowledge under section 131(2) (it is a presumption in this instance) that the goods were (in this case) uncustomed. In order to do this all he has to do is to prove to the satisfaction of the Court that he does not know that the duty has not been paid *(Public Prosecutor* v. *Tay Yew Lia, supra)*. He can only do this in his defence.

I think the learned President was confused by the decision in *Yap Yoon Lin* v. *Regina*[2]. In that case the accused was proceeding from Penang to Ipoh with a number of packs of playing cards. Duty was payable on those cards on the mainland but not in Penang. The accused did not declare the playing cards at Butterworth but they were discovered by the Customs before he had left the Customs Shed, when he was still theoretically in Penang. It was held that these playing cards could not have become uncustomed goods until the accused had walked out of the Customs Shed, because they were not dutiable in Penang, and as he had not done that the playing cards had not at the operative time become uncustomed goods, and no offence therefore had at that time been committed.

For what it is worth I find difficult to follow and, with respect, disagree with the decision in *Yap Yoon Lin* v. *Regina*. It seems to me that section 99(1) of the Ordinance means quite simply what it says and that is that when anyone entering or leaving the Federation fails to declare dutiable or prohibited goods in his possession such goods are thereupon, on his denial of the existence of such goods to a Customs Officer, immediately deemed to be uncustomed. From that moment onwards he is in possession of uncustomed goods, whether at that stage they come within the definition of "uncustomed goods" in section 2 or not.

However, the facts in the present case differ from the facts in that case because, as I understand it, the respondent had not come from Thailand and was simply at Rantau Panjang, which is in Kelantan, and at the place where she was stopped the goods found in her possession were dutiable. Accordingly, the case of *Yap Yoon Lin* v. *Regina* is of no assistance on the facts of this case.

I accordingly allowed the appeal, quashed the order of acquittal and discharge, and ordered the case to be remitted to the learned President for him to call upon the respondent for her defence.

Appeal allowed.

CHUAH KOOI HOE v. PUBLIC PROSECUTOR

[A. Cr. J. (Hepworth J.) March 2, 1960]

[Raub — Criminal Appeal No. 12 of 1960]

Criminal Law and Procedure — Penal Code (Cap. 45), s.420 — Prevention of Corruption Ordinance 1950, s.3(a) — Misjoinder of charges — Whether illegality or irregularity.

The appellant, in this case, was charged with, and convicted of cheating under section 420 of the Penal Code, and also an offence of corruption under section 3(a) of the Prevention of Corruption Ordinance. The main ground of appeal was that it was an illegality to charge an accused person with the offence of cheating under section 420 of the Penal Code and the offence of corruption under the Prevention of Corruption Ordinance, 1950, and have the two charges tried at one and the same time.

Held: it is a misjoinder of charges as certain evidence admissible on one charge would be inadmissible under the other; also, persons who were accomplices in one charge would not be accomplices under the other. However this amounted to an irregularity and not an illegality.

Cases referred to:—

(1) *Banta Singh* v. *Public Prosecutor* [1941] M.L.J. 154.

(2) *Jusoh bin Saman* v. *Public Prosecutor* [1949] M.L.J. 120.